

MEMO ENDORSED



HON. VALERIE FIGUEREDO

UNITED STATES MAGISTRATE JUDGE

DATED: 5-2-2024

Plaintiff's motion to appoint a special master is denied without prejudice. At this juncture, the Court does not deem it necessary to appoint a special master. Plaintiff should focus on filing his amended complaint, which is due by May 31, 2024. The Clerk of Court is respectfully directed to terminate the motions at ECF Nos. 73 and 75.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
RONALD DAVIDSON, Plaintiff,

-- against --

OFFICE OF COURT ADMINISTRATION;
HON. JOSEPH ZAYAS;
HON. LAWRENCE MARKS;
JOHN DOE1;
JOHN DOE2;
JOHN DOE3;
JOHN SULLIVAN;
ALIA RAZZAQ;

TRACEY FERDINAND;
NORMA JENNINGS;
TRAVIS ARRINDEL;
VANESSA FANG;
FRANCES ORTIZ;

HON. THOMAS DINAPOLI;
KIMBERLY HILL ;
HON. DAWN PINNOCK;

PATRICK KEHOE, Defendants

1:22-cv-08936
-PGG-VF

MOTION FOR THE
APPOINTMENT OF
HON. LOUIS STANTON
TO BE SPECIAL MASTER
PER FRCP RULE 53

Oral argument and
expedited hearing
requested

1. This is the Plaintiff's second attempt to seek the appointment of a Special Master because of an "exceptional condition" per Federal Rules of Civil Procedure (FRCP) Rule 53(a)(1)(B)(i). — see *Plyler v. Doe*, 47

US 702, 216 (1982) ["equal protection implicates a presumptively invidious disadvantage affecting "the exercise of a 'fundamental right'"]. — see US Constitution, Article 6, Amendments 1 and 14; and see 75 FR 56164, 56225 (September 15, 2010) re 28 CFR part 35, "Nondiscrimination on the Basis of Disability in State and Local Government Services"

28 CFR §35.160

"The US Department of Justice (DOJ) interprets §35.160 to require effective communication in courts ... [and] the appropriateness of particular auxiliary aids and services may vary as a situation changes, the Department strongly encourages public entities to do a communication assessment of the individual with a disability when the need for auxiliary aids and services is first identified, and to reassess communication effectiveness regularly throughout the communication A public entity has a continuing obligation to assess the auxiliary aids and services it is providing, and should consult with individuals with disabilities on a continuing basis to assess what measures are required to ensure effective communication." [emphasis added with *italics* and underlining] — see bottom of middle column at 75 FR 56225 [PDF p. 62 of 73]

<https://www.govinfo.gov/content/pkg/FR-2010-09-15/pdf/2010-21821.pdf>

2. This is the Plaintiff's first application for an Order authorizing the Special Master to have unlimited discretion about *ex parte* communication concerning issues having to do with the Plaintiff's age, disabilities, and requests for interactive processes for identifying meaningful accommodations and modifications of procedures (ECF Nos. 28, 39 and 67); and the functional purposes of the Plaintiff's several requests have been emphasized with redundant repetition when

(a) the 93rd Congress (January 3, 1971 – January 3, 1973)
enacted the Rehabilitation Act of 1973 (RA), Pub. L. 93-112, 87
Stat. 355

(b) the 94th Congress (January 3, 1975 – January 3, 1977)
enacted the Age Discrimination Act of 1975, Pub. L. 94-135, 89
Stat. 713

(c) the 95th Congress (January 3, 1977 – January 3, 1979)
enacted the Rehabilitation Act Amendments of 1978, Pub. L.
95-602, 92 Stat. 2995

(d) the 99th Congress (January 3, 1985 – January 3, 1987)
enacted the Rehabilitation Act Amendments of 1986, Pub. L.
99-506, 100 Stat. 1807

(e) the 100th Congress (January 3, 1987 – January 3, 1989)
enacted the Civil Rights Restoration Act of 1987 (CRRA), Pub. L.
100-259, 102 Stat. 28

(f) the 101st Congress (January 3, 1989 – January 3, 1991)
enacted the Americans with Disabilities Act of 1990 (ADA), Pub.
L. 101-336, 104 Stat. 327

(g) the 104th Congress (January 3, 1995 – January 3, 1997)
enacted the Health Insurance Portability and Accountability Act of
1996 (HIPAA), Pub. L. 104-191, 100 Stat 1936

(h) the 110th Congress (January 3, 2007 – January 3, 2009)
enacted the ADA Amendments Act of 2008 (ADAAA), Pub L.
110-325, 122 Stat. 355

(i) the 111th Congress (January 3, 2009 – January 3, 2011)
enacted the Patient Protection and Affordable Care Act of 2010
(ACA), Pub. L. 111-148, 124 Stat. 109-1025

3. The Plaintiff's request for the appointment of a Special Master is
consistent with the enacted will of serial Congresses and the assent of
the President of the United States; and it is consistent with the
structural design of regulations implementing related Acts of Congress
chronologically listed *ante* in paragraph 2; and it is consistent with
prototype regulations promulgated by the US Department of Health,
Education and Welfare (HEW) which have been the law of the land since
1978; and it is consistent with subsequent statutes, executive orders
and regulations which mirror congruent baselines; and it is consistent

with words that are published in the Federal Register for all to read,

including someone with cognitive disabilities, e.g.,

(a) 43 FR 2132 (Jan 13, 1978) re 45 CFR part 85, Implementation of Executive Order 11914, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs, Coordination of Federal Agency Enforcement of Section 504 of the Rehabilitation Act of 1973 [PDF p. 19 of 35]

https://archives.federalregister.gov/issue_slice/1978/1/13/2102-2136.pdf#page=19, e.g.,

(i) 45 CFR §85.51(b)(3) "A recipient may not, directly or through contractual-or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state." — see bottom of left column at 43 FR 2138 re General prohibitions against discrimination [PDF p. 25 of 35]

https://archives.federalregister.gov/issue_slice/1978/1/13/21

02-2136.pdf#page=25

(ii) 45 CFR §85.53 "A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. — see middle of right column at 43 FR 2138 re Employment, Reasonable accommodation [PDF p. 25 of 35]

https://archives.federalregister.gov/issue_slice/1978/1/13/21

02-2136.pdf#page=25

(iii) 45 CFR §85.56 "No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance."— see bottom of right column 43 FR 2138 re Program Accessibility [PDF p. 25 of 35]

https://archives.federalregister.gov/issue_slice/1978/1/13/21

02-2136.pdf#page=253

(b) 45 FR 37620 (June 3, 1980) re 28 CFR part 42,
"Nondiscrimination Based on Handicap in Federally Assisted
Programs; Implementation of Section 504 of the Rehabilitation Act
of 1973 and Executive Order 11914, Final Rule" [PDF p. 15 of 59]
https://archives.federalregister.gov/issue_slice/1980/6/3/37576-37634.pdf#page=15; and see

45 FR 37620, 37630 (June 3, 1980)

"Where the courts provide specialized assistance with respect
to court proceedings, the courts are required to insure that
*handicapped persons are able to participate in such
assistance on an equal basis with nonhandicapped persons ...
for all phases of the preparation and presentation of the*
[Plaintiff's case.]" [emphasis added with *italics* and
underlining] — see top of right column at 45 FR 37630 [PDF
p. 25 of 59]

https://archives.federalregister.gov/issue_slice/1980/6/3/37576-37634.pdf#page=25

(c) 45 FR 72995 (Nov. 4, 1980), US Exec. Order 12250 (EO
12250), "Leadership and Co-ordination of Nondiscrimination Laws"

(d) 46 FR 40686 (August 11, 1981) re 28 CFR part 41 and
45 CFR part 85, Redesignation and Transfer of Section 504
Guidelines [PDF p. 9 of 10]

https://archives.federalregister.gov/issue_slice/1981/8/11/40678

40687.pdf#page=9

(i) 28 CFR §41.51(b)(3), same words as in 45 CFR §85.51(b)(3) re General prohibitions against discrimination — see middle of right column at 46 FR 40686 ["The rule will retitle the present guidelines at 45 CFR Part 85, transfer them to 28 CFR Part 41, and make necessary nomenclature changes. Publication of this rule as a proposal for public comment is unnecessary since *it is solely a redesignation of existing regulations.*"] [PDF p. 9 of 10]

https://archives.federalregister.gov/issue_slice/1981/8/11/40678.pdf#page=9

(ii) 28 CFR §41.53, same words as in 45 CFR §85.53 re Employment, Reasonable accommodation — see *Id.*
(iii) 28 CFR §41.56, same word as in 45 CFR §85.56 re Program Accessibility — see *Id.*

(e) 49 FR 35724 (Sept. 11, 1984) re 28 CFR part 39, Final Rule,

Section-by-Section Analysis and Response To Comments

[PDF p. 122 of 144]

<https://www.govinfo.gov/content/pkg/FR-1984-09-11/pdf/FR-1984-09-11.pdf#page=122>

(f) 56 FR 35594 (July 26, 1991) re 28 CFR part 35,

Nondiscrimination on the Basis of Disability in State and Local
Government Services [PDF p. 402 of 516]

<https://www.govinfo.gov/content/pkg/FR-1991-07-26/pdf/FR-1991-07-26.pdf#page=402>

(g) 75 FR 56164 (September 15, 2010) re 28 CFR part 35 ["This final rule revises the regulation of the Department of Justice (Department) that implements title II of the Americans with Disabilities Act (ADA), relating to non-discrimination on the basis of disability in State and local government services ... to update or amend certain provisions of the title II regulation so that they comport with the Department's legal and practical experiences in enforcing the ADA since 1991."] [emphasis added with *italics* and underlining] — see top of right column at 75 FR 56164 [PDF p. 1 of 73]

<https://www.govinfo.gov/content/pkg/FR-2010-09-15/pdf/2010-21821.pdf>

(i) 75 FR 56164, 56224 (September 15, 2010)

(1) "... [T]he 'primary consideration' obligation set out at §35.160(b)(2) ... [and] in the preamble to the 1991 title II regulation [is] reaffirmed here: 'The public entity

shall honor the choice [of the individual with a disability]
unless it can demonstrate that another effective means
of communication exists or that use of the means
chosen would not be required under §35.164. Deference
to the request of the individual with a disability is
desirable because of the range of disabilities, the variety
of auxiliary aids and services, and different
circumstances requiring effective communication." 28
CFR part 35, app. A at 580 (2009). [emphasis added
with *italics* and underlining] — see middle of left
column at 75 FR 56223 [PDF p. 60 of 73]

[https://www.govinfo.gov/content/pkg/FR-2010-09-15/p
df/2010-21821.pdf](https://www.govinfo.gov/content/pkg/FR-2010-09-15/pdf/2010-21821.pdf)

(2) "The first sentence in §35.160(b)(2) codifies the
axiom that the type of auxiliary aid or service necessary
to ensure *effective communication will vary with the*
situation, and provides factors for consideration in
making the determination, including the method of
communication used by the individual; the nature,
length, and complexity of the communication involved;
and the context in which the communication is taking
place. Inclusion of this language under title II is

consistent with longstanding policy in this area. See,
e.g., *The Americans with Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services*, section II-7.1000 [emphasis added with *italics* and underlining] — see bottom of left column at 75 FR 56223 [PDF p. 60 of 73] <https://www.govinfo.gov/content/pkg/FR-2010-09-15/pdf/2010-21821.pdf>

(3) "... [T]he Department has concluded that public entities sometimes misunderstand the scope of their obligations under the statute and the regulation. Section 35.160 in the final rule codifies the Department's long-standing policies in this area and includes provisions that reflect technological advances in the area of auxiliary aids and services." [emphasis added with *italics* and underlining] — see bottom of left column at 75 FR 56223 [PDF p. 60 of 73] <https://www.govinfo.gov/content/pkg/FR-2010-09-15/pdf/2010-21821.pdf>

(ii) 75 FR 56164, 56225 (September 15, 2010)

"Many commenters urged the Department to stress the obligation of State and local courts to provide effective

communication The Department cautions public entities that without appropriate auxiliary aids and services, such individuals are denied an opportunity to participate fully in the judicial process, and denied benefits of the judicial system that are available to others.

" ... The general nondiscrimination provision in §35.130(a) provides that no individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity. *The Department consistently interprets this provision and §35.160 to require effective communication in courts* The Department has developed a variety of technical assistance and guidance documents on the requirements for title II entities to provide effective communication; those materials are available on the Department Web site at: [http:// www.ada.gov](http://www.ada.gov)

"...[T]he appropriateness of particular auxiliary aids and services may vary as a situation changes, the Department strongly encourages public entities to do a communication assessment of the individual with a disability when the need

for auxiliary aids and services is first identified, and to reassess communication effectiveness regularly throughout the communication A public entity has a continuing obligation to assess the auxiliary aids and services it is providing, and should consult with individuals with disabilities on a continuing basis to assess what measures are required to ensure effective communication." [emphasis added with *italics* and underlining] — see 75 FR 56225 [PDF p. 62 of 73] <https://www.govinfo.gov/content/pkg/FR-2010-09-15/pdf/2010-21821.pdf>

4. This Court's error in denying the Plaintiff's initial request for the appointment of a Special Master (ECF No. 39) anticipated that this second motion could be submitted: ["At this juncture, the Court does not deem it necessary to appoint a special master. Plaintiff's motion to appoint a special master is therefore denied without prejudice. Plaintiff may renew his request at a later date should he feel that the Court is not heeding his requests, or should other circumstances arise."] — see 75 FR 56164, 56225 (September 15, 2010), *supra*; and see attached # (1) Motion Exhibit 1: Notice of Eviction – 14 Days, Marshal's Docket No. 15510 Residential, April 25, 2024

5. If his health permits and he agrees to accept, US District Judge Louis Stanton is suggested for appointment per FRCP Rule 53(b)(1); and the Plaintiff knows of no reason which would disqualify this senior judge per 28 USC §455.

6. The Plaintiff's need for a Special Master is made urgent by "extreme hardship" which has been defined by the New York State (NYS) legislature in the Housing Stability and Tenant Protection Act of 2019 (HSTPA), also known as the Tenant Protection Act (TPA); and in part, this legislation amended Section 753 of the NY Real Property Actions and Proceedings Law (RPAPL).

14 ... the court, on application of the occupant, may stay the issuance of a warrant and also stay any execution to collect the costs of

15 the proceeding for a period of not more than [six months] one year, if

16 it appears that the premises are used for dwelling purposes; that the

17 application is made in good faith; that the applicant cannot within the

18 neighborhood secure suitable premises similar to those occupied by [him]

20 the applicant and that [~~he~~] the applicant

made due and reasonable

21 efforts to secure such other premises, or that by reason of

other facts

22 it would occasion extreme hardship to [~~him or his~~] the

applicant or the

23 applicant's family if the stay were not granted. In determining

whether

24 refusal to grant a stay would occasion extreme hardship, the

court shall

25 consider serious ill health, significant exacerbation of an

ongoing

26 condition, a child's enrollment in a local school, and any

other exten-

27 uating life circumstances affecting the ability of the applicant

or the

28 applicant's family to relocate and maintain quality of life. The

court

29 shall consider any substantial hardship the stay may impose

on the land-

30 lord in determining whether to grant the stay or in setting

the length

31 or other terms of the stay" [new words in the law are underscored and deleted old law is shown with ~~strike-out~~ enclosed in brackets] -- see HSTPA or TPA amending RPAPL §753 at p. 53 of 74 <https://legislation.nysenate.gov/pdf/bills/2019/S6458>; and see *Crowder v. Kitagawa*, 81 F.3d 1480, 1504 (9th Cir. 1996), citing *Alexander v. Choate*, 469 U.S. 287, 302 (1985) ["In *Choate*, the Court concluded that Congress intended to protect disabled persons from discrimination arising out of both discriminatory animus and 'thoughtlessness,' 'indifference,' or 'benign neglect' ... [and] whether disabled persons were denied 'meaningful access' to state-provided services"]; and see *Crowder v. Kitagawa*, 842 F. Supp. 1257 (D. Haw. 1994), citing *Plyler, supra*; and compare *Cleburne v. Cleburne Living Center, Inc.*, 473 US 432, 440 (1985). [rational relationship to a legitimate government interest]

7. Within the context defined by the US Department of Justice (DOJ) at 45 FR 37620, 37630 (June 3, 1980), some of the new words added to RPAPL §753 are functional restatements of the RA; the ADA; the NYS Executive Law (Exec L), Article 15, Human Rights Law (NY HRL), Exec L §§290–301; NYC Local Law No. 49 (1977), Human Rights Law (NYC HRL), NYC Administrative Code (NYC Code), Title 8, Civil Rights, NYC

Code §§8.101-8.703; the NYS Uniform Commercial Code (UCC), Uniform Commercial Code (UCC), Article 2, Part 3: General Obligation and Construction of Contract, UCC §§1.101–13.105; and the national policy prohibiting unlawful discrimination solely on the basis of disability

"In determining ... extreme hardship, the court shall consider serious ill health, significant exacerbation of an ongoing condition, ... and any other extenuating life circumstances affecting the ability [and disability] of [a person with disabilities]." — see RPAPL §753; compare 2 CFR §200.300(a) [Statutory and national policy requirements]; and see top of right column at 45 FR 37620, 37630 (June 3, 1980) re "Court Agencies" [PDF p. 25 of 59] https://archives.federalregister.gov/issue_slice/1980/6/3/37576-37634.pdf#page=25

8. Within the context of emphasis by redundant repetition in 45 FR 37620, 37630 (June 3, 1980) and in RPAPL §753 (2019), the precatory and/or hortatory statements of former Acting-Chief Administrative Judge Tamiko Amaker concurrently function as an express warranty statement about the fact of post-pandemic comorbidity factors affecting litigants with disabilities, and this post-pandemic cohort includes the Plaintiff

ACTING CHIEF ADMIN. JUDGE AMAKER:

8 ... you know, we do our best

9 to keep everyone up-to-date on ADA

10 accommodations, especially post-pandemic.

11 It's something that I personally, you know,

12 have really instructed my judges that we have

13 to listen to individuals' requests for ADA

14 accommodations because if they have some

15 preexisting condition or some comorbidity

16 issue, then we certainly want to hear that

17 and make the necessary accommodation.

18 And in fact immediately post-pandemic

19 I was personally doing it for a court that I

20 was supervising because I wanted to make sure

21 that everyone who needed that accommodation

22 was given that accommodation. So that is

23 something I will certainly stress with our

24 judges." [emphasis added with *italics*, underlining] — "2-7-23

Joint Legislative Budget Hearing," Testimony of Tamiko Amaker,

Acting-Chief Administrative Judge, New York State Office of Court

Administration

https://nystateassembly.granicus.com/player/clip/7209?view_id=8&redirect=true&h=db73bb94a29a57022a0242c264904d1e; and see Transcript, p. 99, lines 8-24

<https://nyassembly.gov/write/upload/publichearing/001340/transcript.pdf>

<https://nyassembly.gov/write/upload/publichearing/001340/transcript.pdf>

9. Within a context of emphasis by redundant repetition established by 45 FR 37620, 37630 (June 3, 1980) and RPAPL §753 (2019) and the testimony of Judge Amaker (2023), the Plaintiff is seeking not less than three in-chambers, burden-shifting opportunities to use spoken and written words to communicate with the Special Master in ways that are explained in NYC Local Law No. 59 (2018) ["cooperative dialogue"], NYC Code §8-102, §8-107.28; and this burden-shifting, interactive process of talking and writing is needed in order to

- (a) to assist this Court's decision-making about post-pandemic comorbidity factors affecting the Plaintiff's "program access" in this US District Court; and
- (b) to help the Plaintiff figure out a plan and/or template for explaining and suggesting how to mitigate the effects of communication barriers this Court can't or won't understand

because of irrebuttable presumptions. — see *McDonnell Douglas Corp v. Green*, 411 US 792 (1973) [burden shifting]; and see *Jacobsen v. NYC Health & Hosps. Corp.*, 22 N.Y.3d 824 (2014) [interactive process]; and see bottom of left column at 49 FR 35728 ["irrebuttable presumptions that absolutely exclude"]

10. The Plaintiff's request for a Special Master is needed, in part, because the facts and law in this case — complicated by the sequelae of neurological disabilities — compel the Plaintiff to marry FRCP Rule 8(e) with FRCP Rule 53(a)(1)(B)(i); and this specific amalgamation is anticipated in words codified at 42 USC §12134(b), citing 28 CFR part 41 and 28 CFR part 39 in chronological rather than non-numerical order in order to emphasize with redundant repetition that the will of Congress has been enacted to encourage nuanced analysis and to encourage affirmative and prophylactic actions; e.g.,

- (i) 1978. 45 CFR §85.53(b)(3) *ante* at subparagraph 3(a)(i)
- (ii) 1980. 28 CFR §41.53(b)(3) *ante* at subparagraph 3(d)(i)
- (iii) 1984. 28 CFR §39.130(b)(3): "... may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would ... subject qualified handicapped persons to discrimination on the basis of handicap; or ... defeat or substantially impair

accomplishment of the objectives of a program or activity with

respect to handicapped persons"]; and

(iv) 1984. 49 FR 35724, 35728 (Sept. 11, 1984)

"Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access

to the agency's programs or activities. The *phrase "criteria or*

methods of administration" refers to official written ... policies and

to the actual practices This subparagraph prohibits both

blatantly exclusionary policies or practices and nonessential

policies and practices that are neutral on their face, but deny

handicapped persons an effective

*opportunity to participate"] [emphasis added with *italics* and*

underlining] — see bottom of middle column at 49 FR 35728 [PDF

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<https://www.govinfo.gov/content/pkg/FR-1984-09-11/pdf/FR-1984-09-11.pdf#page=126>; and see 28 CFR §42.502(c)(1) [*"not*

obviated by or otherwise affected by the existence of any ...

requirement that, on the basis of disability, imposes ... limits upon

the eligibility of qualified individuals with disabilities to receive

*services."] [emphasis added with *italics* and underlining]*

11. The emphasis with redundant repetition in the prototype regulatory template developed by HEW encompasses the structural redundancies that are neither plain nor simple because discrimination defined as unlawful is often neither plain nor simple; and the mirrored enforcement schemes of 80+ federal agencies — including regulations of the US Department of Health and Human Services (HHS), the US Department of Housing and Urban Development (HUD), the US Department of Justice (DOJ) and the Office of Management and Budget (OMB) — are individually and collectively probative in this case.

12. The underlying fabric of law in this case is awkward, unwieldy; and it's a fact that the Plaintiff is clumsy with words; nevertheless, it is also a fact that this is what is — an interwoven fabric of law which serial Congresses and serial NY legislatures and serial NYC Councils have woven together in prescient anticipation of precisely this kind of "exceptional condition" per FRCP Rule 53(a)(1)(B)(i)

13. The warp and weft of fact and law now acknowledged to be within this Court's jurisdiction require this Court and the Special Master to think about how the function of FRCP Rule 8(e) ["... construed so as to do justice"] subordinates FRCP Rule 8(a) ["short plain statement"] and

FRCP Rule 8(d) ["simple, concise, and direct"] — see *ante* at

paragraphs 2 and 10; and see

49 FR 35724, 35728 (Sept. 11, 1984)

"Section 39.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR §41.51).

This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

"Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in §39.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation.

If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in §39.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

"Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result

from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs-or activities without regard to an individual's actual ability to participate." — see middle of right column at 49 FR 35728 [PDF p. 126 of 144]

<https://www.govinfo.gov/content/pkg/FR-1984-09-11/pdf/FR-1984-09-11.pdf#page=126>

14. The underlying fabric of law in this case requires this Court to parse a complicated pattern of words woven together over the course of five decades; moreover, the peculiar difficulties of this case were anticipated in 1980 by President Jimmy Carter:

"...[T]he action I am taking today will make it easier for those jurisdictions which wish to comply with Federal nondiscrimination statutes and much harder for those who seek to violate those provisions. It is an outgrowth of my determination to prevent Federal dollars from being used to perpetuate patterns of conduct which inhibit the full enjoyment of Federal financial assistance by all groups [not excluding the Plaintiff] within our society.

[emphasis added with *italics* and underlining] — see US Exec.

Order 12250 (EO 12250), "Leadership and Coordination of

Nondiscrimination Laws," 45 FR 72995 (Nov. 4, 1980); and see EO 12250 Signing Statement of President Carter, November 2, 1980; and see *Henrietta D. v. Bloomberg*, 331 F.3d 261, 278 (2d Cir. 2003), citing Charles Alan Wright & Arthur R. Miller, *5 Federal Practice & Procedure* §1271 (2002) [FRCP re "burden of proof ... when the evidence needed is not typically within the party's control"]; and see 28 CFR §35.164 [burden of proof in writing]; and see NYS UCC §2-313 [express warranty]

15. This motion is about the functional denial of meaningful program access — emphasizing the Plaintiff's continuing needs for "usability" in this US District Court; and this application for the appointment of a Special Master is functionally different from the purposes of the Plaintiff's words in his prolix Supplemental Complaint [ECF Nos. 34-35]. — see top of right column at 45 FR 37629 re "usability" [PDF 24 of 59] https://archives.federalregister.gov/issue_slice/1980/6/3/37576-37634.pdf#page=24

14. The Plaintiff's need for the Special Master is made urgent by the misconduct of the scofflaw Defendants in violation of FRCP Rule 60(3); however, in the "cooperative dialogue" with the Special Master, the Plaintiff anticipates that this rule will be background only. — see 28 CFR

§35.160(b)(2) [the accommodations and/or modifications "necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place."] [emphasis added with *italics* and underlining].

15. The Plaintiff seeks to work together with the Special Master in a process of putting short and plain words together to define a working model of a kind of burden-shifting analysis template for the Plaintiff and this Court to use as needed in needed interactive processes going forward; and this difficult work would seem likely to require

- (a) parsing the consequences of the chronology of actions and inaction in 2022 through 2024 which today combine to affect Plaintiff's abilities and disabilities in the contexts of "extreme hardship" as defined at RPAPL §753 (2019), including
 - (i) "serious ill health"; and
 - (ii) "exacerbation of ongoing conditions"; and
 - (iii) "extenuating life circumstances" affecting the Plaintiff's abilities and disabilities; and

(b) parsing projected consequences of future requests for
interactive processes for determining meaningful modifications of
procedures.

Dated: April 28, 2023
New York, New York

Respectfully submitted,
/s/ Ronald Davidson

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EXHIBITS

NOTE: There is one exhibit identified in the paragraphs of this Motion.

(1) Motion Exhibit 1

Notice of Eviction – 14 Days, Marshal's Docket No. 15510 Residential,
April 25, 2024

TABLE OF CITATIONS

CASES

<i>Alexander v. Choate,</i>	
469 U.S. 287 (1985)	15
<i>Cleburne v. Cleburne Living Center, Inc.,</i>	
473 US 432 (1985)	16
<i>Crowder v. Kitagawa,</i>	
81 F.3d 1480 (9th Cir. 1996)	15
<i>Crowder v. Kitagawa,</i>	
842 F. Supp. 1257 (D. Haw. 1994)	16
<i>Henrietta D. v. Bloomberg,</i>	
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CIVIL COURT OF THE CITY OF NEW YORK
 COUNTY OF NEW YORK
 TRIBUNAL CIVIL DE LA CIUDAD DE NEW YORK
 CONDADO DE NEW YORK

Marshal's Docket No. 15510 RESIDENTIAL

PATRICK D. KEHOE AS SUCCESSOR,
 EXECUTOR OF THE ESTATE OF *Ursula Ferguson Deceat*
 against

RONALD DAVIDSON
 531 MAIN STREET
 Apt# 217
 NEW YORK NY 10044

Petitioner
LandlordRespondent
TenantRespondent
Undertenant

CITY MARSHAL
 DAVID SMITH #30
 1 Cross Island Plaza
 Rosedale, NY 11422
 Tel: (718) 978-8070

NOTICE OF EVICTION – 14 DAYS

To the above named tenant(s) and undertenant(s):

The Court has issued a warrant of eviction. If you do not vacate the location listed above within **FOURTEEN DAYS** after the date of this notice, YOU MAY BE EVICTED, WITHOUT FURTHER NOTICE ON THE **FOLLOWING BUSINESS DAY** or on any business day after. "Business Days" are Monday through Friday except legal holidays.

HOW CAN I STOP THIS EVICTION?

- The ONLY way you can stop this eviction is with a Court order prior to eviction that (1) temporarily stays your eviction, or (2) vacates a warrant for the non-payment of rent, after a deposit or payment with the Court of the full rent due.
- You may apply for such an order at the Civil Court, Landlord-Tenant part, in your borough. Contact information for the Courts is available at the link below.
- If granted, a temporary stay will stop this eviction until the stay expires or is vacated by the Court.

HOW CAN I BE EVICTED?

- If you do nothing in response to this notice, you may be evicted without further notice.
- If a Court has already ordered that you be evicted if you fail to make a payment or comply with the Court's order by a certain date, your failure to pay or comply with the Court's order by that date may result in your eviction without further notice.

HOW CAN I GET HELP?

- New York City provides free legal services for tenants facing eviction. Call 718-557-1379 for information about how to access free legal assistance. Free interpretation services are available.
- If you are dependent upon a person in the military service of the United States, let the clerk of the Court know immediately in order to protect your rights. Contact information for the Clerk is available at the link below.
- The Department of Social Services may be able to help you with back payments or other assistance. Call 718-557-1399 or 311 for information. Free interpretation services are available.

Date of Notice/Fechada el [†]

Thursday, April 25, 2024

Earliest Eviction Date/

Fecha del primer desalojo/ 05/10/24

More Information / Más información en
[\(212\) 709-7900](http://nyc.gov/doit/evictions)

驅逐通知 - 更多信息

Уведомление о выселении: дополнительная информация

উচ্ছেদন সমন - আরও তথ্যের জন্য

اشعار إخلاء - مزيد من المعلومات

انخلاء كافوسن - مزيد معلومات

驅逐通知 - 更多資訊

Avi Konsenan Degépismán: plis enfómasyon

퇴거 통지 - 자세한 정보

Avis d'expulsion: plus d'informations

Powiezomienie o eksmisji: dodatkowe informacje

† The date of this notice shall be on or after the date the notice is served on respondent.

† La presente notificación esta fechada a partir del dia de entrega al demandado.